IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO. 1634 OF 2003.

Mrs.Gulshan Kamaluddin Koslawala
& others. : Appellants.

versus

Gulab B. Jadhav & Anr. : Respondents.

Mr.S.R.Kudroli for the appellants.
Mr.Nitin Ghaware i/by Ajit Karwande for Respondent No.1.
Mrs.Arati Barve for Respondent No.2.

CORAM : D.G.DESHPANDE,J.

DATED : 26th August 2005.

ORAL ORDER

1. Heard advocates for the respective parties. The appellants are the original claimants who had filed a petition i.e. Claim Petition No.2905 of 1993 claiming Rs.10,00,000/-.

The name of the deceased was Kamaluddin who was the husband of appellant No.1 and father of appellant Nos. 2 and 3. On 19-7-1993 at about 10.00 a.m. he was riding a motor scooter NO.BLM-3872 on Zakaria Bunder Road, Sewree, Bombay 15 and was proceeding from Wadala towards Reay Road. When he was near the Gate No.8, the offending motor lorry bearing No.MHL-1066 came from his behind, which was being driven in excessive speed and it knocked down the rider of the scooter from behind. The deceased Kamaluddin was thrown on the road and he sustained serious injuries. He was removed to KEM Hospital but declared dead. The motor lorry was owned by Respondent No.1 and was insured with the National Insurance Company - Respondent No.2.

2. In the aforesaid background, the claim petition came to be filed. The age of the deceased was 43 years at the time of accident. He was doing a business of coal and his monthly earnings was Rs.5000/-. The trial Court accepted the case of the appellants and awarded them compensation of Rs.6,09,500/- inclusive of Rs.25,000/- awarded under section 140 with interest at the rate of 6% p.a. from 1-1-2002

till its realisation. Therefore, this appeal by the appellants for enhancement.

4. There is no cross appeal by the respondent/owner and, therefore, there is no question of reducing the compensation or altering the findings of the court in that regard. But the question is, whether claimants/appellants are entitled for further enhancement.

5. Counsel for the appellants contended that the future prospects in the business of deceased Kamaluddin were not considered; loss of business was not considered under the head of Loss of Consortium and proper compensation was not awarded.

6. On the other hand it was contended by the respondent No.1’s advocate that because of use of kerosene and gas of those who are dealing in coal were in losses or at any rate there were no prospects at all in that business and restrictions were imposed in cutting the wood from forest and converting it into coal. There was no future prospect in the coal business. There is absolutely no case for enhancement and

the tribunal has awarded just, proper and adequate compensation.

7. The evidence about income was given by the Constituted Attorney of the claimants, who has stated that the deceased was doing the business of Rs.5,000/- per month. Uncle of appellant No.1 also gave his evidence to support and he contended that the deceased had taken overdraft facility from Development Co-operative bank for about Rs.3,00,000/-. Accountant (PW5) was also examined to prove the accounts of the business and, the balance sheets were also produced.

. The appellants had claimed before the trial Court Rs.90,000/- (annual) should be taken out as dependency and the total figure in that regard comes to Rs.9,00,000/-. Then Rs.15,000/- should given for loss of consortium and further Rs.1,20,000/- should be given under the head of loss to the estate and Rs.2000/- towards funeral expenses.

. The tribunal, however, accepted

Rs.5,000/- as monthly income of the deceased and annual dependency comes to Rs.60,000/-. The age of the deceased was 43 years at the time accident. Therefore, multiplier of 15 was applied. 1/3rd was deducted from the income towards personal expenses and, therefore, balance to Rs.6,00,000/-. Rs.5,000/- were paid towards loss of consortium; Rs.2000/- towards funeral expenses and Rs.2500/- towards loss to the estate.

4. The crucial question is, whether the tribunal was justified in accepting Rs.5000/- as monthly income of the deceased and, then deducting 1/3rd from the annual income towards personal expenses. This aspect has to be considered on the basis of evidence produced on record.

. 1st witness is the power of attorney holder Shaukat Ali Cyclewala. He has stated that all the applicants are staying at U.S.A. He was power of attorney holder and in his evidence he has stated that the monthly income of the deceased at the time of death was about Rs.5000/- He then produced profit and loss account of the

business marked "X1" and X2" for identification. He has stated in cross examination that he has no personal knowledge how the deceased was conducting his business of coal. He does not know the exact gross and net income of the deceased from the said business. He had no personal knowledge whether the deceased was filing income tax returns. He denied the suggestion that income of the deceased was not Rs.5000/- per month.

. Then 2nd witness is Jafar Ali Budhwani, who is the uncle of appellant No.1. He has stated that he knew that the deceased had taken overdraft facility from Development Co-operative Bank for Rs.3,00,000/- and the said amount was settled with the bank at Rs.1,20,000/-.

. The 3rd witness is Sarfaraz Ali Choudhari. He appears to be an eye witness. He has not stated about the income. The next witness is Dilip Suryavanshi. He is the police officer not stated anything about the income. The 5th witness is Amir Ali Ghesani. He was looking after the accounts of the deceased. He also produced statement marked "X1" for

identification which exhibited as Ex-27. Summary of sales and purchase was also produced. He has stated that the business was closed down after the death of deceased. The next witness was Hemant Karnik who was working with Development Credit Bank Ltd. He has stated that the deceased had Saving Account with the Bank and Overdraft facility in the name of Honesty Coal Depot. The letter marked as "X2" was shown to him. Then it was marked as Ex-30. He produced the bank statement and the statement of saving bank account. This is the only evidence on record about the income of the deceased. Only witness who speaks about the income is P.W.1. Several documents are produced, but nobody has stated about the contents of the documents. Even the claimants have not entered into witness box to prove the income or to show that it was more than Rs.5000/-.

5. In this background, the tribunal was justified in accepting Rs.5000/- per month as the income and, also further justified in deducting 1/3rd from the annual income towards the personal expenses of the deceased. Therefore, the findings of the tribunal regarding awarding

compensation of Rs.6,00,000/- are not required to be interfered with or changed. There is no evidence worthy of consideration for granting Rs.1,20,000/- or anything for loss of business. There is no evidence at all about the loss of future prospect. No case at all is made out in this regard. Funeral expenses have been rightly awarded. Interference is only required regarding the amount of consortium which was awarded by the tribunal at Rs.5,000/-. It should have been 20,000/-. In fact, the appellants are staying in U.S.A. on the date of accident and have not stated about their income, how they are surviving themselves, then there is no question of granting anything on the count of business. The evidence of P.W.1 who is the main witness is very cryptic. It does not assure any right on any importance as are now tried to be argued before this Court. The appellants have also claimed interest at 18% p.a. There are no reasons to award 18% interest. However, awarding 6% interest does not appear to be proper. Therefore, the appellants are entitled for 9% interest. Hence I pass the following order:-

:ORDER:

The appeal is partly allowed.

To the compensation awarded by the tribunal Rs.15,000/- shall be added and paid by the respondents in addition towards the loss of consortium.

The respondents shall pay interest at 9% p.a. from 01-01-2002 till realisation or desposit of the amount of

Rest of the claim is rejected.

[D.G.DESHPANDE,J]